



STATE OF DELAWARE  
JUSTICE OF THE PEACE COURT NO. 13  
1010 CONCORD AVENUE  
CONCORD PROFESSIONAL CENTER  
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2530

SYSTEM ID: @2556271  
WATERPOLO IV  
72 HOBART DRIVE  
NEWARK, DE 19713

VS.

Civil Action No.: JP13-17-001620

SYSTEM ID: @2936588  
ASHLEY WORD  
12 HOBART DRIVE  
APT B1  
NEWARK DE 19713

**Appearances:**

Plaintiff Waterpolo IV, failed to appear  
Defendant Ashley Word appeared by and through Jillian M. Pratt, Esq.

Before: Lee, D.C.M.; Hanby, J.; Ferrell, J.

Heard: May 8, 2017  
Decided: June 9, 2017

**ORDER OF JUDGMENT  
ON TRIAL DE NOVO**

This case is a summary possession action brought by Plaintiff Waterpolo IV against the tenant, Defendant Ashley Word. The case was originally heard before a single Judge (Portante, J.) on March 20, 2017 and a judgment was entered on March 29, 2017. Defendant objected to the ruling and appealed to a three-judge panel pursuant to 25 Del. C. §5717. Trial *de novo* was held on May 8, 2017. Deputy Chief Magistrate Lee, Judge Ferrell and Judge Hanby constituted the panel. This Order memorializes the Panel's decision announced in open court.

Plaintiff Waterpolo IV failed to appear. Defendant Ashley Word was represented by Jillian Pratt, Esq.

**Plaintiff's Claim**

Due to Plaintiff's failure to appear, the Court dismissed the landlord's claim for back rent and possession.

**Defendant's Counterclaim**

Defendant Ashley Word asserted a counterclaim for damages in the amount of \$5668.01. The counterclaim included two-thirds per diem rent abatement for lack of heat/air conditioning and hot water, reimbursement for homeowner insurance deductible, increased electricity usage and replacement value for items damaged due to a water leak. The Court heard testimony from Ms. Word that established a time period from November through April in which the tenant was without heat and/or air conditioning. Defendant was forced to use space heaters to heat the apartment during the cold weather, which resulted in higher than usual electric bills. Defendant testified that she notified the landlord on several occasions about the problem. As of the date of the *de novo* hearing the air conditioning/heating unit was still broken. Additionally, Defendant testified that she and her two children were forced to shower elsewhere due to lack of hot water.

#### Findings

After consideration of the testimony offered, the Panel finds, by a preponderance of the evidence, in favor of Counterclaim Plaintiff Ashley Word and against Counterclaim Defendant Waterpolo IV for \$4070.60 in damages due to landlord's failure to provide heat and/or air conditioning from November through April (\$3702.60) plus increased electricity usage (\$368.00). The landlord's failure to correct the problem in a timely manner, after receiving notice, deprived the Defendant of a substantial part of the benefit of her bargain. The applicable law outlining a tenant's remedy for landlord's failure to provide heat and air conditioning is addressed in 25 Del. C. §5308 which reads in pertinent part:

§5308 Essential services; landlord obligation and tenant remedies.

(a) If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of the Code; or in violation of an applicable housing code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:

- (1) Upon written notice of the continuation of the problem to the landlord immediately terminate the rental agreement; or
- (2) Upon written notice to the landlord, keep two-thirds per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.

In the instant case, the testimony of the Defendant Word is not refuted. Therefore, the Court awards a judgment by default against Waterpolo IV in the amount of \$4,070.60. Since Defendant did not provide notice to the Plaintiff of an amendment to the counterclaim to include new and ongoing damages not sought in the original trial, the Panel only awarded damages for two-thirds per diem rent abatement and electric bills as raised in the initial proceeding.

IT IS SO ORDERED this 09th day of Dec. 2017



BONITA N. LEE,  
Deputy Chief Magistrate,  
On behalf of the 3-Judge Panel

